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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,785	10/18/2001	John Loring Yester	201-0303 JMS	5437

28395 7590 01/29/2003  
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EXAMINER	
NGUYEN, THU V	
ART UNIT	PAPER NUMBER

3661  
DATE MAILED: 01/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/682,785	YESTER ET AL.
	Examiner	Art Unit
	Thu V Nguyen	3661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 22 October 2002 .

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1,3-5,7-9,11-14,16 and 17 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,3-5,7-9,11-14,16 and 17 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_ .

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ .

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_ .

## DETAILED ACTION

The amendment filed on October 22, 2002 has been entered. By this amendment, claims 2, 6, 10, and 15 have been canceled, and claims 1, 2-5, 7-9, 11-14, 16-17 are now pending in the application.

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 3-5, 7-9, 11-14, 16-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. In claim 1, lines 18-20, the claimed “wherein the off-board control system is arranged to set a variable operating value based on the information in the input signal and the information representative of vehicle usage” is ambiguous, neither the claim nor the specification specifically teach how the vehicle usage can be used at the off-board control system to set a variable operating value. It is not clear how the vehicle usage data should be used to set a variable operating value.

b. Claims 5, 9, and 14 are similarly rejected as explained in claim 1 above.

c. Claims 3-4, 7-8, 11-13, 16-17 are rejected as being dependent on the rejected base claims.

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***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 3-5, 7-9, 11-14, 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al (U.S 5,808,374) in view of Walsh et al (U.S 4,658,371)

As per claim 1, Miller teaches a system for selectively setting a variable operating parameter in a vehicle, the system comprises: a portable information storage device 35 (fig.1A) for receiving and storing information representative of a particular operating parameter (col.3, lines 56-67; col.4, lines 1-6); a vehicle interface connected to an on-board control system for setting vehicle devices based on the information in the portable information storage device (col.3, lines 60-67).

Miller does not teach storing the vehicle usage in the portable device, and a non-vehicle interface arranged to set a variable operating value based on the stored information in the portable device and the information representative of vehicle usage. However, Walsh teaches storing the vehicle usage in a portable information storage device (col.4, lines 33-37); accessing information stored on the portable device by an off-board computer (col.4, lines 41-44); and setting a variable operating value based on the information in the portable device and the vehicle

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usage information (col.4, lines 48-61; col.6, lines 41-49). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to stores the vehicle usage information to the portable device of Miller in order to provide off-board services such as filling fuel to the vehicle as taught by Walsh.

As per claim 3, providing wireless communication device for communicating signals to/from the portable device 35 (fig.1A) of Miller would have been well known. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to implement a transceiver to the portable device and the interface device of Miller in order to allow remote control and remote set up between the portable device and the interface device of Miller.

As per claim 4, Miller teaches including user preference operating parameter for seat position (col.4, lines 8-20).

As per claim 11-12, Miller teaches storing changes to the user preference on the portable information storage device upon user command (col.4, lines 1-6). Further, automatically storing information representing the changes of the user preference on a portable medium would have been well known. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to allow automatically updating user preference in the portable device in order to automatically store the new user preference.

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As per claim 5, 7-9, 13-14, 16-17 refer to discussion in claim 1, 3-4 above.

***Response to Arguments***

5. Applicant's arguments with respect to claims 1, 3-5 7-9, 11-14, 16-17 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

**Any response to this final action should be mailed to:**

Box AF

Commissioner of Patents and Trademarks

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Washington, D.C. 20231

or faxed to:

(703) 305-7687, (for formal communications; please mark "EXPEDITED PROCEDURE")

Or:

(703) 305-7687 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park V, 2451 Crystal Drive, Arlington, VA., Seventh Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Nguyen whose telephone number is (703) 306-9130. The examiner can normally be reached on Monday-Thursday from 8:00 am to 6:00 pm ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Cuchlinski, can be reached on (703) 308-3873. The fax phone number for this Group is (703)305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703)308-1113.



Thu Nguyen

January 24, 2003